AMENDED JULY 1, 2013



Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair - Present
Aaron Perry, Vice Chair - Present
Scott Diffenderfer - Present
Jacqueline Lalonde - Present
Rick Kendle - Present
Alex Fernandez - Present
Richard "Rick" J. Preira - Present

Staff:

Jose Smith, City Attorney

Donald Papy, Chief Deputy City Attorney

Debora Turner, First Assistant City Attorney

Rafael E. Granado, City Clerk

Liliam Hatfield, OAV, City Clerk's Office

Maria E. Martinez, Assistant City Clerk

Absent

Present

Present

MINUTES

Monday, June 24 2013 at 4:30 p.m.
Commission Chambers, Third Floor, City Hall
Email: CharterReview@miamibeachfl.gov

Special Note: In order to ensure adequate consideration, if necessary, the members of the Charter Review & Revision Board may move any agenda item to another meeting date. In addition, the members of the Charter Review & Revision Board may, at their discretion, adjourn the Charter Review & Revision Board meeting without reaching all agenda items.

Meeting called to order at 4:41 p.m.

Liliam Hatfield, City Clerk's Office staff, announced, for the record, that Rafael E. Granado, City Clerk, is attending a seminar, and introduced Assistant City Clerk Maria Martinez, who is present on his behalf. Roll call taken. All members are present.

Accept Minutes Of The June 10, 2013 Charter Review & Revision Board Meeting.
 Chair Zack stated that there were amendments to the minutes submitted by the City Attorney's Office.

Member Fernandez stated that on Page 13 of the minutes regarding City Commission vacancies, he requested clarification on the motion. His motion was that in the event of <u>a</u> resignation <u>on</u> the City Commission, the vacancy is immediate upon tendering the resignation, and a replacement person, who is_eligible for appointment, will stand for election at the next regularly scheduled election. He also asked for a point of clarification in the event

that there is a Resign To Run situation, that the resignation be effective no later than the night before the election, so that vacancy as well may be filled at an election.

Chair Zack explained that what he is referring to is an item that will be discussed at future meetings.

MOTION TO ACCEPT AMENDMENTS

Motion made by Vice-Chair Perry to accept the amendments as submitted by Legal; seconded by Ms. Lalonde. Voice-vote: 7-0.

MOTION TO APPROVE MINUTES AS AMENDED

ACTION: Motion made by Vice-Chair Perry to approve the minutes as amended by Legal; seconded by Member Fernandez. Voice-vote: 7-0.

ANNOUNCEMENT

Mr. Zack announced that the next meeting is scheduled on July 1, 2013 and he will announce the topics for discussion before adjournment.

He also announced that he will be in Paris on July 1, 2013, but will be able to attend by telephone. Vice-Chair Perry will chair the meeting at that time.

2. Report by Ms. Sylvia Crespo-Tabak of all types of compensation that are received by executive staff and Charter Officials.

Sec. 2.02. - Term and compensation

Mr. Zack introduced the item. (See Handouts and Reference Materials)

Sylvia Crespo-Tabak, Human Resources Director, distributed fictional samples for comparison (Exhibit A and Exhibit B), and stated that the City Manager and City Attorney's salaries are addressed in an ordinance, which Ms. Turner had presented at the last meeting. Ms. Crespo-Tabak explained the Exhibits differentiating salary, compensation and total compensation.

Exhibit A

Exhibit A is a hypothetical example of a young Commissioner, without dependents, earning a salary of \$6,000, for car allowance, parking decal of no monetary value; single membership to the City's Golf Courses valued at \$3,500 a year, the City's Retirement Plan with a contribution of 10% (or \$600), by the Commissioner and to which the City most-recently contributed \$1,790 per year. There is a five-year vesting period and benefits are based on the four-year final average monthly earning. Health insurance coverage, which is voluntary, pays a premium of \$1,617 per year, with the City paying \$3,958 toward the premium.

Member Lalonde stated that having served on the Health Oversight Subcommittee of the Budget Advisory Committee (BAC), a recommendation was made, which may be adopted, which would prohibit any full-time working Commissioner or any other employee from using the City's health insurance, if health insurance is available at their primary job(s).

Chair Zack suggested focusing on Section 2.02, which is Terms and Compensation for Commissioners and the Mayor. They have also previously discussed Section 3.01, Compensation for the City Attorney, and Section 4.01, which is the City Manager's

compensation. Compensation, as used by this Board, means total benefits, and that is what they are trying to discern to make the record clear.

Ms. Crespo-Tabak concluded that for Exhibit A, the total compensation would be \$21,354.00.

Discussion held regarding membership for Golf Courses and other benefits.

Member Kendle asked Ms. Crespo-Tabak if the golf membership is approved by the City Manager or is it approved by ordinance or resolution. Sylvia Crespo-Tabak and City Attorney's Office to research, and bring back to the July 1st Board meeting.

Member Kendle asked whether anything considered compensation, is approved by ordinance or resolution, or is it something that is approved during budget meetings. Ms. Crespo-Tabak answered that except for the golf membership, all other benefits listed on both Exhibits A and B are available to all City's non-bargaining union employees. Discussion continued on the issue and there was discussion on car allowance. Sylvia Crespo-Tabak to research how car allowances are approved and bring back to the July 1st Board meeting.

Chair Zack stated that, in reference to the golf course membership, \$20,000 is paid to the golf course for the six Commissioners, whether or not they used the golf course. Discussion continued and he requested to have information on the following: 1) Does the City pay for the membership; and 2) Voluntary versus mandatory health coverage. **Sylvia Crespo-Tabak to handle**

Member Fernandez stated that this information is very important because the intent of this Board is to promote transparency. He asked Debora Turner, First Assistant City Attorney, if the reason they are having this discussion is to define what salary is.

Debora Turner, First Assistant City Attorney, stated that the Board needs to define what compensation is, because salary is set forth in the City Charter currently. In answering Member Fernandez's question, she added that all benefits, except for salary, or in addition to salary, are compensation. She explained that if their desire is to amend or clarify the section, they can either change the word "compensation" in the title of Section 2.02 to say "salary," and that will conform to what is set forth in the Charter. She suggested in reference to annual salary: "the annual salary for the Commissioners shall be \$6,000 and \$10,000 for the Mayor."

Member Fernandez asked if it is appropriate to present as part of their recommendations, but also with a question to the voters asking, "Shall Section 2.02 of the City Charter be amended to define all compensation, in addition to salary allotted to the Office of the Mayor and Commissioners?" If the voters say "yes" to define all compensation in the City Charter, then by resolution this Board can place the information in the City Charter. Discussion continued regarding compensation versus salary.

Exhibit B

Sylvia Crespo-Tabak, Human Resources Director, stated that *Exhibit B* is another hypothetical example of a fictitious scenario of a 50 to 54 year old male with a dependent spouse and two dependent children. While the benefits available are exactly the same as *Exhibit A*, in *Exhibit A*, a Commissioner would spend \$2,300 per year for benefits, and in Exhibit B he/she would spend \$27,000 on those benefits. That Commissioner earned a salary of \$6,000, but the total compensation was \$40,550, based on the choices and the contributions the City makes towards health insurance and other benefits. Discussion continued regarding benefits and compensation, including car allowance.

Chair Zack stated that there must be a definition of compensation. An inclusion in the Charter can read: "compensation includes salary and all benefits...and shall be set forth in City Ordinance." That ordinance would provide for the reporting on those benefits. Discussion continued.

Member Lalonde clarified that *Exhibit B* will not be true if the recommendation of the BAC is adopted. They are reviewing those benefits and are looking at reducing those benefits for City Commissioners and other employees. Discussion continued regarding the difference between *Exhibits A* and *B* and golf course membership.

MOTION REGARDING COMPENSATION AND SALARY:

Chair Zack asked for a consensus and made a motion to add a sentence to the section to read: "compensation shall include salaries and benefits. Benefits will be defined by City ordinance." He recommended, as an Advisory Board to the Commission, preparing an ordinance to the City Commission, wherein it sets forth compensation, to read as follows: "include all benefits, planning days, vacation days, and any other compensation of monetary value." Discussion continued.

Member Kendle stated that there should not be a dollar amount set for salary, and salary and benefits should be set by ordinance. Discussion continued.

Chair Zack explained to Mr. Kendle that he wants to deal with the motion on the table, and he can make another motion to delete the salary cap and to allow the Commissioners to set their own salaries, but he does not think there is support for this.

Member Fernandez asked in regards to benefits, do they include stipends, car allowances, etc. Ms. Lalonde stated that stipend is not a benefit. It is a cost of doing business and there is no personal benefit on the stipend. Discussion continued regarding stipend.

Sylvia Crespo-Tabak, Human Resources Director, stated that the stipend is not set by the City Manager. The City Manager proposes a budget to the City Commission and they approve it or amend it. Discussion continued.

Chair Zack added that, technically, when someone receives money from a third person, it has to be documented as how it is spent, or it is considered compensation. Discussion held regarding what is a stipend and compensation. Member Lalonde objected to the mischaracterization of the stipend and its implementation. Discussion continued. Member Lalonde is in favor of full disclosures requiring receipt and documentation of those expenses.

Chair Zack gave examples of stipend situations considered compensation. There is some method of documenting that the stipend is going to the purpose that it was intended to. Discussion continued regarding the use of stipend and its reporting.

MOTION REGARDING STIPEND:

Member Kendle made a motion that City Commissioners shall receive a stipend for expenses incurred in connection with official duties, as approved by ordinance or resolution. No second offered. **Motion dies for lack of second**.

FINAL MOTION REGARDING COMPENSATION AND SALARY:

Motion by Chair Zack to add a sentence to the section as follows:

• Compensation shall include all benefits (Planning Days, vacations, etc.)

- Benefits shall be determined by ordinance
- All benefits shall be documented and disclosed pursuant to ordinance.
 Motion seconded by Vice-Chair Perry. Voice-vote: 7-0

Chair Zack requested a draft [resolution] ordinance amending Section 2.02 to present to the City Commission for their consideration. Such ordinance will include everything the Charter Review Board thinks should be in the City Charter, and the Board can recommend what should be considered in the ordinance to effectuate the Charter changes. **City Attorney's Office to handle.**

Member Lalonde is under the impression that at the meeting of June 3, 2013, what the Board asked for was the compensation of the City Manager and the City Attorney. She requested the report, and explained that they requested to look at the compensation level of the City Manager because of the recent outrage of the community since there were items not included on the past manger's contract.

Sylvia Crespo-Tabak apologized and stated that she presented what she understood was her assignment.

Donald Papy, Chief Deputy City Attorney, stated that the issue of compensation for the City Manager and the City Attorney are addressed in the Charter, and both sections state that they will be contained in an ordinance. There is an existing ordinance in the City that reflects the items that are included. In addition to that, the Charter also states that those officers may have contracts with the City, which are publicly disclosed and publicly available. The new City Manager and the City Attorney both have contracts that list all the items.

Member Lalonde stated that they may be fully disclosed, but the public was upset because there was no value associated with those benefits at that time.

Member Fernandez suggested sending a recommendation to the City Commission that, in the future, when they discuss the contracts of the City Manager and the City Attorney, the ordinance should contain a line item breakdown, so upon consideration they can have a valuation for approval. The list of the items should be part of the ordinance. Discussion continued regarding disclosure of all benefits in an ordinance.

Sylvia Crespo-Tabak, Human Resources Director, in answering questions, stated that the documents distributed were not intended to be all-inclusive; it was for illustration purposes only, to give an example of the differences between salary and total compensation.

Mr. Zack stated that the minutes are clear, and it is the intent of this Board to include in benefits all benefits of any value, which will include vacations, planning days, stipend and anything of any value. They are asking for transparency, so the public can see what the values of the benefits are in addition to salary. There was consensus among all members. Chair Zack commended Ms. Crespo-Tabak for a job well done.

3. Presentation by the City Attorney's Office regarding the role and power of an Inspector General and the Independent Auditor.

Per Aleksandr Boksner, Senior Assistant City Attorney's request, this item was deferred to July 1, 2013.

4. Discussion of term limits- Section 2.02.

Chair Zack read the following from the existing Charter:

Sec. 2.02- Term and compensation.

The term of office of the Mayor shall be two (2) years. The term of office of the City Commissioners shall be four (4) years. Commencing with the General Election in November 1997 (excluding individuals holding City of Miami Beach elective office prior thereto for their unexpired terms), the term limit for Miami Beach Commissioners shall be eight consecutive years and the term limit for Miami Beach Mayor shall be six consecutive years respectively, measured retroactively from their first elections said terms not including time served as a member of the City of Miami Beach Commission as a result of having filled a vacancy in the Commission pursuant to Section 2.07 of the City of Miami Beach Charter.

The question is whether an officer who is term limited, can take a hiatus and come back. This language is nonexistent in the Charter. He suggested deleting the word "consecutive;" thereby amending to read a term limit maximum of eight (8) years for Commissioners and six (6) years for Mayor. Discussion held regarding term limits.

MOTION TO AMEND SEC. 2.02 Term Limits

Motion made by Member Diffenderfer; seconded by Member Kendle to delete the word "consecutive" from Section 2.02. No vote taken.

Debora Turner, First Assistant City Attorney, distributed a proposed ballot question with the word "consecutive" stricken. She explained that this item was referred from the City Commission to the Board in April 2013 by Commissioner Tobin. Discussion held regarding term limits.

Member Kendle asked Ms. Turner if the actions taken today would affect the current Mayor if she runs for Commissioner. Ms. Turner clarified that these changes would not affect the November election this year, but the next General Election. Discussion continued.

Member Fernandez stated that in considering this issue, they need to take individuals out of the issue; this is an important issue and the goal is to set good government and good policy for the future. Discussion continued regarding taking politics out of the issue.

Chair Zack stated that it may not affect the next election, but it could affect future elections, unless they are clear that this would not apply to any current Commissioner or Mayor. If you want it not to be political at all, it will not apply to this election, but do it in the future. Discussion held.

Debora Turner, First Assistant City Attorney, in answering Member Lalonde, stated that currently there is language in the Charter that reads: "Commencing with the General Election in November 1997 (excluding individuals holding City of Miami Beach elective office prior thereto for their unexpired terms.) There was discussion regarding Mayor Bower's term limits.

Member Fernandez asked if it is the will of the Board to change the number of term years for the Mayor. Member Lalonde offered to make a motion.

Member Preira stated that it would be unfortunate for this Body to consider or pursue the political agenda of any one appointed. All members of the Board have been appointed by members of the City Commission, and the actions taken here should not affect them.

Discussion continued and Member Lalonde asked why the inequity as far as term limits between the Mayor and Commissioners.

Jorge Gomez, Assistant City Manager, explained that in the mid 1990's the addition of term limits and staggered terms were added to the Charter. One of the reasons was that every two years they wanted to have four (4) members of the City Commission up for election every two years, to have the opportunity to create a majority every two years. That is one of the reasons in the difference in terms.

Mr. Zack asked if the existing term limits have worked or not. Member Lalonde stated that there is a sense that the terms may be short on the Mayor's side. She suggested dealing with this issue separate, and allowing for an extension of the Mayor's term, but maybe capping the time limit taking into account that new extended term of three years.

Member Diffenderfer has a motion on the table, and asked the CRB members if they think that 14 years in total is not long enough.

Member Lalonde suggested increasing the length of Mayor services to five (5) years and discussion continued. Member Kendle explained that if the City wants a leader, it should be a four (4) year term, as in other cities. Discussion continued.

Member Lalonde recommended reverting to two term limits for Mayor, four years per term.

Member Fernandez stated that two-year elections have been done for many years, and there is a perception that a Mayor's position is powerful and influential as far as the operations of the City. He clarified that the voters should have the right to vote every two years for a Mayor; and this is no reflection on anyone running for office or in office at the present time. Discussion continued.

Member Kendle stated that they really do not have the time to govern, as they have fundraising events and meetings, and he thinks they need four (4) years to do a good job.

There was a discussion between Member Lalonde and Chair Zack regarding recall. Chair Zack explained that a recall is a different standard, and there must be some sort of wrongdoing.

Vice-Chair Perry stated that he does not want to take away the opportunities to give people the right to vote; the current process has been working. The campaign is part of the process, but to deny citizens the opportunity to revisit the Mayor's performance every two years, he thinks it is a great opportunity. Discussion continued.

Chair Zack asked for a vote.

Motion by Member Diffenderfer to keep the term limits as they are presently in the Charter; seconded by Member Fernandez; Voice-vote: 5-2; Opposed: Members Lalonde and Kendle.

Debora Turner, First Assistant City Attorney, suggested that if the Board wanted to propose a maximum 14 year lifetime service, the word "consecutive" should be stricken. Discussion continued. She added that the combined lifetime service would not exceed 14 years under such language. Discussion held between Member Kendle and Ms. Turner on this issue. Ms.

Turner stated that after this November election, is the Charter Proposal being discussed passed, Commissioners would have a lifetime ban serving that cannot exceed 14 years.

FINAL MOTION ON TERM LIMITS:

Motion made by Member Diffenderfer; seconded by Member Lalonde, to strike the word "consecutive" so the combined lifetime total service cannot exceed 14 years. Voice-vote: 7-0.

Further discussion regarding salary issue:

Chair Zack suggested tying the Commission salary to 15% of what the City Manager makes; that way with seven Commissioners the formula adds up to about 100%. He added that every time this issue has come up, it has been rejected. This might be a logical solution acceptable to the voters.

Member Lalonde stated that the Chair's suggestion is a brilliant idea, and added that in reading the League of City study, wherein the proper compensation for Commissioners is based on a formulary presented based on population and budget. Based on that study, the Miami Beach City Commissioners should receive compensation in the range of \$45,000 to \$48.000. Discussion continued.

Don Papy, Chief Deputy City Attorney, stated that this could present some problems with increasing salaries, and there are a number of conflict of interest issues with that idea. Discussion held.

Member Kendle thinks people would vote for it if the salary is kept at a reasonable figure, approximately \$40,000. Discussion continued regarding salary based on the percentage as compared to the study.

Member Fernandez is concerned that future City Commissions, in terms of ethics, may alter the figures. He added that it is a great idea.

6:12:17 p.m.

Chair Zack stated that currently the maximum salary is \$262,000; the total range of difference is \$100,000 and 15% of this figure is \$15,000; that is the maximum difference and they will get a good City Manager. This will also depend on the City, and again they need to convince the citizens that they are not taking a risk. They do not want to lose the credibility of the Charter Review Board.

Member Lalonde asked if anyone knew the County Commission salaries.

Joe Gimenez, Assistant City Manager, stated that it is approximately \$80,000 all-inclusive, with a salary is \$6,000.

Member Lalonde suggested the salary be \$45,000 at a minimum.

Member Fernandez stated that as results of his research, in May 2011, the Home Rule Charter amendment went to the voters, to change the salary to that of a full-time position, and increasing the Commission's salary to \$92,000, based on the State formula for the County, and they would have to serve no more than three consecutive (4) year terms in office. This was rejected by Miami Beach voters. However, in January 2012, the question went to voters to increase salary to \$92,000, based on the State formula, but they could

serve no more than two consecutive 4-year terms, and the voters of Miami Beach voted in favor. He suggested doing something similar. Discussion held.

Motion made by Member Fernandez to present to voters an amendment to the Charter that the salary of the City Commissioners shall be provided by State formula and adjusted annually by population. No second offered.

Discussion held regarding a salary cap and Chair Zack stated that it is important to keep the Board's credibility on the proposals to be submitted to the City Commission. Member Kendle stated that the salary should be adjusted for Consumer Price Index.

Vice-Chair Perry stated that the formula that Chair Zack came up with is clever, by dividing the City Manager's salary by seven, but if they can apply to something based on population or other principles, there may be a better chance to pass it. Discussion continued.

Chair Zack stated that item will be continued for discussion at the next meeting, and further requested to have the following information by the July 1st Charter Review Board Meeting: 1. What the salary figure would be if one takes \$6,000 whenever it was adopted and adjusted for CPI to the present date? 2. What the salary figure would be using The League of Cities formula? 3. What do other municipalities in South Florida pay their City Commissioners? Sylvia Crespo-Tabak to handle.

Debora Turner, First Assistant City Attorney, gave the deadlines for submission to the City Commission for this November election. The next election thereafter is currently scheduled for August 2014.

BILL OF RIGHTS UPDATE

Chair Zack explained that the issue requested by the Homeowners Association will have to be discussed at a Special Charter Review Board meeting. This would be perfect for the Board to have their jurisdiction extended. He also asked if there is a revised resolution from the HOA's for the Board to consider. **Special CRB Meeting to be announced at the July 1**st **CRB meeting.**

Christine Florez, Miami Beach United, stated that a separate meeting was going to define what an association is, and there were changes to what they presented. She was under the impression that the Board would come up with the definition of an association, and upon Member Lalonde's request she added that the HOA will meet and come up with the definition of association.

TOPICS FOR DISCUSSION FOR THE JULY 1, 2013 AGENDA

- a. Continuation of salary commissioners
- b. City Auditor
- c. Subpoena Powers
- d. Election versus Appointment and vacancies
- e. Beach Preservation

Meeting adjourned at 6:27:44 p.m.

Handouts or Reference Materials:

1. Exhibit A - Example of salary versus total compensation

- 2. Exhibit B Example of salary versus total compensation3. Ordinance Proposed Ballot Question deleting the word "consecutive"